

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff(s),

v.

EDWIN YOSHIHIRO FUJINAGA and MRI
INTERNATIONAL, INC., et al.,

Defendant(s).

Case No. 2:13-CV-1658 JCM (CWH)

ORDER

Presently before the court is defendants Edwin Fujinaga and MRI International's (hereinafter "defendants") motion for reconsideration. (Doc. # 196). Plaintiff Securities and Exchange Commission (hereinafter "the SEC") filed a response, (doc. # 198), and defendants filed a reply, (doc. # 204).

Also before the court is defendants' motion for extension of time. (Doc. # 205).

I. Background

The instant case arises from a Ponzi scheme perpetrated by defendants. Defendants collected hundreds of millions of dollars for purported investments in medical accounts receivable. Defendants used these funds to repay earlier investments as well as for their own personal expenses. By May 2013, defendants had entirely depleted the invested funds. (Doc. # 118).

On September 11, 2013, the SEC filed a civil enforcement action against defendants. (Doc. # 2). On October 7, 2013, the parties stipulated to the entry of a preliminary injunction. (Doc. # 20). On December 11, 2013, defendants filed an answer to the SEC's complaint. (Doc. # 27). The parties completed discovery by July 8, 2014. (Doc. # 138).

1 On July 16, 2014, the SEC filed a motion for summary judgment on liability. (Doc. # 113).
 2 On October 3, 2014, the court granted the SEC's motion. (Doc. # 156). On November 24, 2014,
 3 the SEC filed a motion for judgment against defendants Fujinaga and MRI International, Inc.
 4 (Doc. # 178). Defendants filed a response, (doc. # 184), and the SEC filed a reply, (doc. # 185).

5 On January 27, 2015, the court granted the SEC's motion for judgment, holding defendants
 6 jointly and severally liable for the disgorgement of proceeds in the amount of \$442,229,611.70,
 7 and prejudgment interest in the amount of \$102,129,752.38. The court also held defendants liable
 8 for civil money penalties of \$20,000,000.00 each. Finally, the court permanently enjoined
 9 defendants from any further securities violations. (Doc. # 188).

10 On the same date, the clerk entered judgment in favor of the SEC in the same amounts.
 11 (doc. # 189). On February 4, 2015, the SEC filed a motion to certify the court's judgment as final
 12 pursuant to Federal Rule of Civil Procedure 54(b). Defendants did not file a response, and the
 13 court granted the motion on February 25, 2015. (Doc. # 195).

14 On March 9, 2015, defendants filed the instant motion for reconsideration. (Doc. # 196).
 15 On April 15, 2015, upon filing their reply, defendants filed the instant motion to extend time. (Doc.
 16 # 205).

17 **II. Legal Standard**

18 A motion for reconsideration "should not be granted, absent highly unusual circumstances."
 19 *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000). "Reconsideration is
 20 appropriate if the district court (1) is presented with newly discovered evidence, (2) committed
 21 clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in
 22 controlling law." *School Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993); Fed. R.
 23 Civ. P. 60(b). "A motion to alter or amend a judgment must be filed no later than 28 days after
 24 the entry of the judgment." Fed. R. Civ. P. 59(e).

25 **III. Discussion**

26 In the instant motion, defendants argue that the court should reconsider its January 27,
 27 2015, order on the SEC's motion for judgment. (Doc. # 196). Defendants contend that
 28 reconsideration is proper because "the SEC failed to meet its burden of reasonably approximating

1 a disgorgement value, and provided improper, inadmissible, and previously unproduced expert
 2 testimony in support of its Motion.” (Doc. # 196). The SEC responds that defendants’ motion is
 3 no more than “a veiled attempt to re-argue their opposition to the SEC’s motion for final
 4 judgment.” (Doc. # 198).

5 Defendants argue that the court committed clear error in granting the SEC’s motion for
 6 judgment in the amounts requested. Defendants also state that there is new evidence in this case
 7 that warrants reconsideration. These arguments will be addressed in turn.

8 *A. Clear error*

9 Defendants contend that the court erroneously considered improper evidence and applied
 10 inconsistent legal standards, such that reconsideration is warranted. (Doc. # 196). The court will
 11 address each clear error argument individually.

12 *i. Rand declaration*

13 Through the instant motion, defendants restate their objections to Mr. Rand’s declaration
 14 already made in their response to the SEC’s motion for judgment. The court rejected these
 15 arguments in concluding that Mr. Rand served as a summary witness for the SEC. The court did
 16 not consider Mr. Rand’s declaration as expert testimony, and finds that defendants’ arguments do
 17 not provide a basis for reconsideration. *See United States v. Ransfer*, 749 F.3d 914, 937 (11th Cir.
 18 2014) (“The testimony did not require expertise because it was a summary of financial records the
 19 witness reviewed and an explanation of how the summary was calculated.”); *see also SEC v.*
 20 *Blackwell*, No. 3:11-CV-0234-L, 2012 WL 13564, at *3 (N.D. Tex. 2012) (considering declaration
 21 of SEC accountant based on analysis of bank account activity and concluding that method of
 22 calculating interest was reasonable).

23 Mr. Rand’s declaration provided an explanation of the SEC’s calculation methods for
 24 profits to be disgorged in this case. The court independently reviewed the SEC’s proposed figures
 25 and calculations, concluding that the SEC produced sufficient evidence to show that its
 26 disgorgement approximation was reasonable. (Doc. # 188).

27 Pursuant to the applicable legal standard, the burden then shifted to defendants to show
 28 that the SEC’s figures were not reasonable. The court found that defendants failed to meet this

1 burden.¹ Accordingly, the court found it appropriate to hold defendants liable for disgorgement in
 2 the amount requested by the SEC.

3 The court has already rejected defendants' arguments that Mr. Rand's declaration
 4 constitutes improper expert testimony. Mr. Rand's declaration served as a summary of the SEC's
 5 evidence in support of disgorgement, and did not constitute opinion testimony based on specialized
 6 knowledge. Because defendants cannot show that the court committed clear error in considering
 7 Mr. Rand's declaration, reconsideration is not appropriate on these grounds.

8 *ii. Inconsistent legal standards*

9 Defendants contend that the court applied inconsistent legal standards in reviewing the
 10 evidence in the case. Specifically, defendants argue that the court accepted the SEC's reliance on
 11 summary charts while penalizing defendants for failing to produce voluminous records in support
 12 of their opposition. (Doc. # 196).

13 The SEC responds that this argument is baseless and that the court "ruled consistently with
 14 a record that contained glaring differences in proof." (Doc. # 198). The SEC contends that Mr.
 15 Rand's declaration was inherently more reliable than that of Mr. Fujinaga, for a few reasons. (Doc.
 16 # 196).

17 First, the SEC notes that Mr. Fujinaga's declaration was properly viewed with suspicion,
 18 considering his implication in the wrongdoing at issue in this case. Second, the SEC points out
 19 that while Mr. Rand prepared his spreadsheets based on the records at issue, Mr. Fujinaga did not
 20 personally create the tables attached to his declaration.² Third, the SEC contends that its
 21 calculations were more trustworthy because Mr. Rand's declaration included an explanation of the
 22 methodology used to obtain the disgorgement amounts, while the declaration of defendant
 23 Fujinaga did not include such a description.

25 ¹ In particular, the court rejected defendants' argument that the disgorgement amount
 26 should not include funds received before 2008. In doing so, the court cited applicable case law
 27 supporting its conclusion and noted that the amended complaint in this case included allegations
 28 of conduct predating 2008. (Doc. # 188).

28 ² Mr. Fujinaga's declaration included the following statement: "To my knowledge, this
 [compilation from the bank statements] was prepared by Shiu Ling Lam, an employee of MRI, at
 my direction. Ms. Lam is no longer employed by MRI." (Doc. # 184-2).

1 The court agrees. The SEC's calculations were based on MRI's balance sheet, which the
2 court considered in determining whether the SEC's approximations were reasonable. After
3 concluding that the SEC had met its burden, the court looked to the evidence produced by
4 defendants in opposition.

5 The court concluded that defendants failed to show how the SEC's calculations were
6 unreasonable. While the court noted that defendants failed to provide records in support of their
7 calculations, the court did not base its analysis on this fact alone. Instead, the court reviewed
8 defendants' arguments and concluded that they failed to refute the SEC's reasonable calculations.
9 (Doc. # 188).

10 The court did not apply two different evidentiary standards to the parties' data. Instead,
11 the court first considered the SEC's disgorgement calculations, concluding based on the evidence
12 provided that they were reasonable. The court then appropriately shifted the burden to defendants
13 to show that the SEC's approximation was improper. Upon considering defendants' supporting
14 evidence, the court concluded that defendants did not meet this burden.

15 On this basis, the court found that the SEC was entitled to disgorgement in the amount
16 requested. This was not clear error. The motion for reconsideration will not be granted on
17 defendants' theory of inconsistent legal standards.

18 *iii. Failure to include liquidations*

19 Defendants also take issue with the fact that the court failed to offset the disgorgement
20 amount with defendants' proposed amounts of liquidations or redemptions paid out to investors.
21 As the court previously held, the SEC met its burden to show a reasonable approximation of
22 disgorgement funds. By contrast, the court found that defendants failed to meet their burden of
23 proving the SEC's approximation unreasonable. (Doc. # 188).

24 In the instant motion, defendants provide the same arguments as to why the court should
25 offset the disgorgement amounts with liquidations. Defendants attempt to bolster their contentions
26 by attaching bank statements and further declarations. Defendants argue that the court should
27 consider this evidence and alter its ruling because defendants were not provided an appropriate
28 opportunity to respond to the SEC's evidence produced in support of its motion for judgment.

1 The court has already declined to entertain defendants' objections regarding Mr. Rand's
2 declaration. The court will not readdress these previously rejected arguments on a motion to
3 reconsider. Defendants have not shown that the court committed clear error in failing to adopt the
4 defendants' proposed calculations. Accordingly, reconsideration on these grounds is not
5 appropriate.

6 *iv. Prejudgment interest*

7 Defendants argue that the court improperly calculated prejudgment interest. In support of
8 this contention, defendants largely restate arguments previously made in support of their response
9 to the SEC's motion for judgment, as well as reasoning contained in the instant request for
10 reconsideration of the disgorgement amounts imposed.

11 Prejudgment interest is contingent on the proper disgorgement amount. Pursuant to the
12 analysis above, the court finds that reconsideration of the disgorgement amount in this case is not
13 appropriate. Accordingly, the court will also decline the request to reconsider prejudgment
14 interest.

15 Defendants do not show clear error or new evidence warranting reconsideration of the
16 prejudgment interest amounts. The court imposed prejudgment interest consistent with the SEC's
17 reasonable approximation for disgorgement. For these reasons, the motion to reconsider will not
18 be granted on these grounds.

19 *v. Penalties*

20 The court will not reconsider its decision to impose civil monetary penalties on defendants.
21 Here, defendants again restate arguments previously made in their response to the SEC's motion
22 for judgment. In essence, defendants argue that penalties are inappropriate because defendants do
23 not pose a threat of future violations. (Doc. # 196).

24 Defendants seek to introduce further support for this argument in the form of
25 correspondence between Mr. Fujinaga and other individuals regarding Japanese securities laws.
26 These attachments do not constitute "newly discovered evidence," and are not relevant to the
27 court's decision to impose civil monetary penalties. Accordingly, reconsideration on this basis is
28 not appropriate.

1 The court imposed third-tier civil penalties in light of the amounts fraudulently obtained
2 from investors in this case. Defendants fail to show clear error. In fact, the court believes that the
3 applicable case law clearly supports the imposition of third-tier penalties in this case. The motion
4 will not be granted on this basis.

5 *B. New evidence*

6 Defendants purport to submit new evidence and analysis, contending that they should have
7 been afforded the opportunity to cross-examine and challenge the SEC's reasonable approximation
8 of disgorgement. In particular, defendants attach proposed tax returns and bank statements.
9 Defendants state that "[d]ue to both time and monetary constraints, this information was not
10 previously available; moreover, it is the byproduct of months of effort, which was required to
11 reanalyze MRI's income position and the subsequent tax returns." (Doc. # 196).

12 The SEC responds that all evidence submitted in conjunction with defendants' motion was
13 available to defendants to use in their response to the SEC's motion for judgment, with the
14 exception of the amended tax return drafts. However, the SEC contends that these documents have
15 no weight because they are simply unsigned drafts prepared by accountants for defendant Fujinaga.
16 Further, the SEC notes that the documents upon which these drafts are based were previously
17 available. (Doc. # 198).

18 The court agrees with the SEC on this issue. Defendants have not shown "newly
19 discovered evidence" warranting reconsideration. Instead, defendants simply present evidence
20 that was previously available in additional forms, in an attempt to obtain a different result. The
21 court is not persuaded that reconsideration is warranted on these grounds. Accordingly, the court
22 will not grant the motion to reconsider on the basis of newly discovered evidence.

23 *C. Motion for extension of time*

24 On April 15, 2015, defendants filed a motion for extension of time within which to present
25 new evidence. Defendants note that they have recently obtained new counsel. Defendants seek
26 an additional fourteen days to review records and present new evidence to the court. They state
27 that the SEC declined to stipulate to this request, in light of its desire to secure a final judgment as
28 soon as possible. (Doc. # 205).

1 The court will deny defendants' request. The instant issues have been briefed extensively,
2 and the court has already ruled on them. Further, defendants had the chance to present new
3 evidence through the instant motion. The court will not delay resolution of this case any further.

4 **IV. Conclusion**

5 Overall, the court is not persuaded by defendants' arguments. The court considered the
6 evidence produced by the SEC in support of its motion for judgment and concluded that the
7 proposed amounts for disgorgement, prejudgment interest, and civil penalties were reasonable. As
8 already stated, defendants have been provided more than sufficient opportunity to respond and
9 refute the SEC's arguments. They still fail to do so.

10 Accordingly,

11 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendants' motion for
12 reconsideration, (doc. # 196), be, and the same hereby is, DENIED.

13 IT IS FURTHER ORDERED that defendants' motion for extension of time, (doc. # 205),
14 be, and the same hereby is, DENIED.

15 DATED April 20, 2015.

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17 UNITED STATES DISTRICT JUDGE
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